



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 20 2015

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Ms. Kathleen Schibanoff
Chief Executive Officer
Olivet Management LLC
73 Wheeler Road
Wingdale, New York 12594

7005 3110 0000 5947 3290

RE: Olivet Management LLC - Section 114 Letter CAA-02-2015-1451

Dear Ms. Schibanoff:

The Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* ("CAA" or the "Act"), at Section 114, 42 U.S.C. § 7414, authorizes the U.S. Environmental Protection Agency ("EPA") to require submittal of information to, among other things, assess compliance with the Act and regulations promulgated pursuant to the Act. This letter ("Information Request") requires Olivet Management LLC ("Olivet") to submit information about its recent revitalization or "clean up" project of the buildings and structures at its Olivet Center facility located in Dover, New York to demonstrate compliance with Section 112 of the Act and its attendant regulations which are codified at 40 C.F.R. Part 61 Subpart M ("Asbestos NESHAP Regulations").

Pursuant to Section 114 of the Act, this Information Request requires you to submit all of the information requested by EPA in Enclosure 1. Failure to submit the requested information required by this Information Request is a violation of Section 114 of the Act, and may result in an order to comply, an order for administrative penalties, or a civil action for penalties and injunction requiring compliance pursuant to EPA enforcement authority provided at Section 113(a) of the Act. See Enclosure 2. In accordance with Section 113(c)(2)(A) of the Act, any person who knowingly makes any false statement, representation, or certification in, or omits material information from or knowingly alters, conceals, or fails to file a response to this requirement may be subject to criminal penalties.

You may choose to assert a business confidentiality claim covering all or part of the information submitted. You may not, however, withhold any information on that basis. In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted by you, a cover sheet, with stamped or typed legend, or other suitable form of notice must be placed on or attached to the document, with language such as "trade secret," "proprietary," or "company

confidential.” Allegedly confidential portions of non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. For each confidentiality claim, the date or occurrence of any event after which the information can be released should be indicated, if applicable. If no confidentiality claim accompanies the information received by EPA, it may be made available to the public without further notice to you. EPA will disclose information covered by a confidentiality claim only to the extent allowed by, and in accordance with, the procedures set forth in EPA’s public information regulations, 40 C.F.R. §§ 2.201 et seq. (See 41 Fed. Reg. 36902 (Sept. 1, 1976)).

In order to fully comply with this Information Request, your response must include a completed Certification of Response (Attachment to Enclosure 1), notarized by a notary public, and signed by you or another officer of your company. Your responses to the questions in Enclosure 1, including all supporting documents and the Certification of Response, must be submitted to EPA in accordance with the schedule as outlined in Enclosure 1 to:

Mr. Robert Buettner, Chief
Air Compliance Branch
U.S. Environmental Protection Agency
Region 2 Office
290 Broadway, 21st Floor
New York, New York 10007-1866


A request for an extension of time to respond to this, or any portion of this Information Request, must be in writing to Mr. Buettner at the address above, must include the reason(s) for the delay in responding, and must include the requested subsequent date for responding. An extension of time will be effective only if granted by EPA in writing.

The response to this request shall be in accordance with the schedules as outlined in Enclosure 1. You should be aware that the schedule allows for requests of additional information, to be targeted by EPA, which would specify certain projects and time frames of concern. These requests, although they will be a modification of what is set out in Enclosure 1, will be considered part of this original request and subject to the aforementioned requirements.

Please include the above-cited Reference No. CAA-02-2015-1451 in any and all of your responses to this Information Request. Further, if within one year of the date of this Information Request, you obtain information different from, or in addition to, the information provided in response to this Information Request, or if there is any change affecting the information submitted, you must notify EPA and submit the relevant information no later than thirty (30) calendar days after such information becomes available.

You may address any questions concerning this matter to Victor Tu in the Air Compliance Branch at tu.victor@epa.gov or 212-637-3476. We appreciate and look forward to your prompt response.

Sincerely yours,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

bcc: H. Patel, DECA/ACB
V. Tu, DECA/ACB
J. Simpson, ORC/AB
ACB Source File

ENCLOSURE 1

INFORMATION REQUEST PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT

This Information Request seeks information regarding Olivet's compliance with the Asbestos NESHAP Regulations.

Part I: Instructions

- A. Provide a complete and separate narrative response to each question in Part III below, including but not limited to producing all documents and data requested by the question. The information must be submitted in electronic format when possible. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include attachments to or enclosures with any document.
- B. Precede each of your responses with the number of the question to which it corresponds and at the end of each response identify the person(s) that provided the information that was used or considered in responding to that question, as well as each person that was consulted in the preparation of that response. If you produce documents or data in response to a question, label or mark those items in such a way so that EPA can determine which materials correspond to which question.
- C. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
- D. Provide responses to the best of your ability, even if the information sought was never documented in writing or if supporting documents are no longer available. Consult with all pertinent employees or other personnel in preparing your responses. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.
- E. Where documents or information necessary for a response are not in your possession, custody or control, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess the documents or information.

Part II: Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. § 7401, 40 C.F.R. Part 61, Subpart M and other Clean Air Act implementing regulations. Additional definitional clarification is specified below.

- A. The term "site" shall mean that portion of the property, including all buildings and structures thereon, formerly known as the Harlem River Psychiatric Center, located at the intersection of Route 22 and Wheeler Road in Dover, New York that is owned by Olivet.

- B. The term "clean up" shall mean all work conducted at the site, including, but not limited to, cleaning, sandblasting, renovation, scraping, wall replacement, ceiling tile removal or replacement, etc., for the past five (5) years from the date of this Information Request.
- C. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these.
- D. The term "you" shall mean the addressee of this Information Request, the addressee's officers, partners, managers, employees, contractors, trustees, successors, predecessors, assigns, and agents.

Part III: Information Request

Please provide responses to the following questions within thirty (30) days of your receipt of this Information Request. Submit responses in electronic format where appropriate and available.

Contractors

- 1) Provide an organized chart showing any and all Olivet management staff and executive members, including but not limited to trustee, CEO, Communications Director, Superintendent, and Administrative Staff, that were involved with, supervised, or decided to undertake the "clean up" project. Provide the individual's last name, first name, title, current phone number, current email address, and summary of involvement.
- 2) Provide a list of all contractors, including but not limited to "clean up" contractors, demolition contractors, renovation contractors, general contractors, subcontractors, asbestos inspectors, project managers, air monitoring contractors, and waste haulers that submitted bids for contracts for any and all "clean up" work at the site. Include the contractor and contractor's business owner's name, address, contact phone number and point-of-contact.
- 3) Provide copies of all documents received as part of the bidding process related to the contractors listed in the response to question (2).
- 4) Provide copies of all, agendas, meeting minutes, rosters, handouts, etc. pertaining to all meetings with contractors listed in response to question (2) prior to bidding, as well as the dates for any such meetings.
- 5) Provide a list of all contractors, including but not limited to "clean up" contractors, demolition contractors, renovation contractors, general contractors, subcontractors, asbestos inspectors, project managers, air monitoring contractors, and waste haulers that were awarded and accepted contracts for the "clean up" work at the site and provide a summary of their involvement at the site. Include the contractor's owner's name, address, contact phone number and point-of-contact.

- 6) Provide a list of all contractors that were hired without bidding, including but not limited to "clean up" contractors, demolition contractors, renovation contractors, general contractors, subcontractors, asbestos inspectors, project managers, air monitoring contractors, and waste haulers Olivet used for the "clean up" project, and provide a summary of their involvement at the site. Include the contractor's owner's name, address, contact phone number and point-of-contact.
- 7) Provide copies of signed contracts and related materials between Olivet and all contractors listed in the response to questions (5) and/or (6).
- 8) Were any contractors listed in response to questions (2) and/or (6) made aware that the Asbestos NESHAP Regulations apply to all buildings at the "clean up" project prior to submitting the bids? Provide all correspondence and documents, i.e., email, notification letters, meeting minutes, etc., that show which contractors were provided this information prior to the bidding for the contract.
- 9) Did Olivet provide written instruction to any contractors listed in response to questions (5) and/or (6) on the methods required for handling and disposing of waste that would be generated during the "clean up" project? Provide a copy of all such instructions.
- 10) If the response to question (9) is an unequivocal "no", did Olivet provide oral instruction to any contractors listed in response to questions (5) and/or (6) on the methods required for handling and disposing of waste that would be generated during the "clean up" project? Who provided the oral instruction? Provide a list of the individuals, and the company that they worked or contracted for, that received this instruction. Provide the date, time and location that the oral instruction was provided. Provide copies of all documents demonstrating that oral instruction was given.
- 11) Was written instruction provided to any contractors listed in response to questions (5) and/or (6) on the work practice requirements of the Asbestos NESHAP Regulations, i.e. wetting the work area and debris at all time, etc., prior to the contractor starting work at the site? Provide a copy of all such instructions.
- 12) If the response to question (11) is an unequivocal no, was oral instruction provided to any contractors listed in response to questions (5) and/or (6) regarding the work practice requirements, i.e. wetting the work area and debris at all time, etc., prior to the contractor starting work at the site? Who provided the oral instruction? Provide a list of the individuals, and the company that they worked or contracted for, that received this instruction. Provide the date, time and location that the oral instruction was given. Provide copies off all documents demonstrating that oral instruction was given.
- 13) Did Olivet provide staff members of any contractors listed in response to questions (5) and/or (6) personal protective gear, including but not limited to, respirator, tyvex suits, etc., when they were working? If not, were written instructions provided to the contractors that Olivet would not be supplying the personal protective equipment? Was this explicitly written in the contract, instruction, and/or any other documentations between Olivet and its contractors?

- 14) If the answer to the first part of question (13) is an unequivocal no, were any contractors listed in questions (5) and/or (6) provided written instructions that they were to provide their own personal protective gear to their staff? Provide a copy of all such instructions.
- 15) If the answer to question (14) is an unequivocal no, were any contractors listed in response to questions (5) and/or (6) orally told that they would have to provide their own personal protective equipment? Provide a list of the individuals and the company that they belong to that received this instruction. Provide the date, time and location that the oral instruction was given. Provide copies off all rosters which show that oral instruction was given.
- 16) Provide all correspondence, including but not limited to, written letters, emails, telephone records, etc., between Olivet staff and executive members listed in response to question (1) and the contractors listed in response to questions (5) and/or (6), from August 1, 2013 to the present.
- 17) Provide all payment records, including but not limited to, receipts, back checks, etc., made to all contractors listed in response questions (5) and/or (6).

Building Identification

- 18) Provide a list of all the buildings at the site that were included in the "clean up" project. Include each building's official address and/or designation number that uniquely identifies the building, the actual start and end date of the work at each building, and the actual start and end date of when the debris was removed from each building. Include a description of what work was completed in these buildings and who (i.e. which contractors or Olivet employees) conducted the work in these buildings. Provide this information in an Excel spreadsheet.
- 19) For each building listed in response to question (18), indicate if a thorough inspection to identify the presence of asbestos containing material was conducted prior to the start of the "clean up" work. Provide this information in the same Excel spreadsheet used in response to question (18).
- 20) Provide copies of all asbestos inspection reports and or surveys prepared at the site prior to the "clean up" project, including draft asbestos inspection reports and/or surveys. These asbestos reports should include, but not be limited to: the date(s) on which the inspection was conducted; the name(s) and qualifications of the person(s) who did the survey; laboratory analysis of suspected asbestos-containing materials; and the locations, identifications, and quantities of all asbestos-containing materials found within the buildings.
- 21) Provide a copy of all maps, or any other documents, drawings, sketches for the buildings and floors that were involved in the "clean up" project listed in response to question (18).
- 22) For the buildings listed in response to question (18), provide a description of each building, such as number of floors, year built, size, and type of facility (commercial, residential, etc.).

- 23) Provide copies of any and all bulk sample analysis reports and clearly indicate from which buildings the samples were taken, the materials sampled, and the laboratory results.

Work Practice

- 24) List the specific dates that "clean up" work, including but not limited to cleaning, sandblasting, renovation, scraping, wall replacement, ceiling tile removal or replacement, etc., occurred.
- 25) Provide a description of the "clean up" work done during the days listed in response to question (24). Provide all documents, including but not limited to, work logs, supervisory logs, and contractor billing records, relating to the work done.
- 26) For every day listed in response to question (24), describe how water was being supplied to contractors when they conducted "clean up" worked in the buildings.
- 27) For every day listed in response to question (24), list the contractors that were on site conducting "clean up" work. Provide all documentation, including but not limited to, schedules, receipts, pay stubs, showing this.
- 28) For every day listed in response to question (24), provide the names of all individuals that were supervising the "clean up" work. Provide a copy of their asbestos credentials.
- 29) For every day listed in response to question (24), were the staff members responsible for supervising the "clean up" work wearing personal protective gear when he/she entered the buildings where "clean up" work was taking place? If not, explain why not.
- 30) For every day listed in response to question (24), were openings in the work area sealed prior to the beginning of "clean up" work in the buildings listed in response to question (18)? If not, explain why not.
- 31) For every day listed in response to question (24), were decontamination stations established for workers working in buildings listed in response to question (18)? If not, explain why not.
- 32) For every day listed in response to question (24), describe Olivet's procedures used to insure that workers were properly decontaminated prior to leaving the buildings.
- 33) For every day listed in response to question (24), was any debris/material removed from the building sold or given to contractors for the purpose of recycling? If so, please provide a description of this activity, including the material involved.
- 34) For every day listed in response to question (24), was any debris/material removed by contractors or Olivet from the buildings and brought off site by the same, other than the contracted waste haulers? If so, explain in detail.

- 35) For every day listed in response to question (24), if debris/material was removed by contractors, other than the contracted waste haulers, from the site, was this at the request of Olivet? If so, who made the request?

Waste Disposal

- 36) For every day listed in response to question (24), provide a list of all waste haulers used. Include the owner's name, address, contact phone number and point-of-contact. Provide the information in an Excel spreadsheet.
- 37) For each waste hauler listed in response to question (36), indicate if each of the waste haulers has a New York State Part 364 Waste Transporter Permit.
- 38) Provide billing statements from all waste haulers listed in response to question (36).
- 39) For each building listed in response to question (18), provide the name and address of the waste hauler(s) used to dispose of the debris from each of the buildings. Provide this information in the same Excel spreadsheet along with the information provided as the response to response to question (36).
- 40) Provide all waste manifests associated with all debris disposals for the "clean up" work. Clearly note the corresponding building associated with each waste manifest if applicable.
- 41) For each building listed in response to question (18), provide the name and address of the landfill(s) where the debris from that building was taken and accepted. Provide this information in the same Excel spreadsheet table along with the information provided as the response to response to question (36).
- 42) For every day listed in response to question (24), list all landfills or other disposal sites that were used to dispose of debris generated during those days. Indicate clearly if the listed landfills or disposal sites are certified to accept asbestos containing waste material.
- 43) For each landfill or disposal site listed in response to question (42), clearly state if the landfill or disposal site is or is not licensed to process asbestos containing waste material.
- 44) For each landfill or disposal site listed in response to question (42), provide the billing statement for waste generated during the "clean up" project.
- 45) Provide the confirmation of delivery for all shipments of debris generated during the "clean up" project that were sent to asbestos licensed landfills or other disposal sites. Clearly note the associated building from where this shipment of debris originated and corresponding confirmation of delivery.

- 46) On every day that work occurred at the site listed in response to question (24), how much total waste was generated in cubic feet? Include the calculations used to derive this number. Include this information and calculation in a clearly understandable Excel spreadsheet.
- 47) Provide a count of the number of waste containers that were used during the "clean up" project.
- 48) Provide the size (length, width, height) of all containers used to hold waste from the "clean up" project.
- 49) Were all waste containers covered at all times when in use, i.e., when they contained some form of waste generated during the "clean up" project?
- 50) Were all waste containers kept wet at all times when in use, i.e., when they contained some form of waste generated during the "clean up" project? If not, explain why.
- 51) Were all waste containers kept covered except when loading during the "clean up" project? If not, explain why.
- 52) Was Hazardous Waste Identification Analysis conducted for the waste containers used during the "clean up" project prior to the disposal of the waste? Provide all documents that indicate this.
- 53) Was debris generated during the "clean up" project removed by any contractors or Olivet employees other than the designated waste hauler using the designated waste containers? If yes, please explain the details.
- 54) If the answer to the response to question (53) is yes, did Olivet instruct the contractors or employees to do so?
- 55) If Olivet has documentation from contractors indicating that instructions were given to not remove debris from the site during the "clean up" project, indicate so and provide copies of this documentation.

Record Keeping

- 56) Provide copies of all reports and documents generated by the project managers that relate to the "clean up" project. If no project managers were used, indicate so and provide an explanation of why one was not used.
- 57) Provide copies of all reports and documents generated by all air monitoring contractors that relate to the "clean up" project. If no air monitoring contractors were used, indicate so and provide explanation of why one was not used.
- 58) Provide copies of all correspondence including, but not limited to, emails, written letters, telephone records, , memorandums, etc., between the project manager and Olivet staff listed in response to question (1).

- 59) Provide all state and local permits that were required and obtained for the "clean up" project.

Supervision

- 60) Provide a description of the process Olivet used to supervise the work that was done during the "clean up" project.
- 61) Provide a list of all staff from Olivet or the project management company that, at least on one occasion, physically observed the work performed at the buildings during the "clean up" project.
- 62) Provide any evidence that at least one foreman, Olivet management representative, or authorized representative trained in the requirements of the Asbestos NESHAP Regulations was present during the "clean up" project.
- 63) Provide all documents, including but not limited to, work logs, written reports to management, emails to management, etc., that indicate whether the foreman, management representative, or authorized representative is trained in the requirements of the Asbestos NESHAP Regulations and is able to identify deviations from the requirements of the Asbestos NESHAP Regulations, e.g., whether or not water was used to wet down the work area, whether particle dust masks were worn during the "clean up" project, etc.
- 64) Did Olivet staff supervise the work during the "clean up" project? If so, list the staff members that were assigned to supervise the work at the site during the time of the "clean up" project. Provide copies of credential for all the people listed demonstrating that the individual is trained in the requirements of the Asbestos NESHAP Regulations.
- 65) If a contractor was hired to supervise the "clean up" project, please provide the contractor's name, address, phone number, and email address.
- 66) For each contractor listed in response to question (65) provide a list of the names of the people that were involved with the "clean up" project. Provide copies of credentials for all the people listed that show the individual is trained in the requirements of the Asbestos NESHAP Regulations.
- 67) Provide the dates that the Olivet staff members and/or staff members of contractor listed in response to question (66) were present and/or absent on the site when work occurred during the "clean up" project.

Financial and Corporate Information

- 68) Provide information regarding Olivet's ownership and corporate structure, and identify all entities affiliated with Olivet such as parent, subsidiary and sibling business entities. Explain the relationship between Olivet and these entities.
- 69) Provide Olivet's net worth for each of the past 3 years with supporting documentation.

- 70) Provide the date that official ownership of the site was transferred to Olivet.
- 71) Provide all documents associated with Olivet's purchase of the site, including but not limited to purchase agreement, property description, maps, a list of buildings purchased, environmental concerns, inspection reports, stipulation, conditions for reuse. Also provide all documents associated with subsequent purchases at the site, e.g., the Haven House acquisition.

Asbestos Inspection Reports

- 72) Provide all asbestos inspection reports and or surveys that were conducted at the site in the past 5 years, including drafts thereof.
- 73) Provide all asbestos inspection reports, or other information regarding asbestos at the site, that Olivet conducted or received as part of the purchase of the site.

ATTACHMENT TO ENCLOSURE 1

CERTIFICATION OF RESPONSE

State of _____:

County of _____:

I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in response to the Information Request and all documents submitted with this response, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted with this response are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that for one year from the date of the Information Request, I am under an obligation to supplement my response to the Information Request if any additional information relevant to the matters should become known or available to me.

NAME (print or type)

TITLE (print or type)

SIGNATURE

Sworn to before me this ____ day of _____, 2015

Notary Public

Enclosure 2

CAA § 113

§ 7413.

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

- (A) issuing an order requiring such person to comply with such requirement or prohibition,

- (B) issuing an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

- (A) issue an administrative penalty order in accordance with subsection (d) of this section,
- (B) issue an order requiring such person to comply with such requirement or prohibition,
- (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or
- (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

- (A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;¹¹
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

- (1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced
 - (A) during any period of federally assumed enforcement, or
 - (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such

person has violated, or is in violation of, such requirement or prohibition.

- (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).
- (3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

- (1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter⁽²⁾

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or

both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation

placed another person in imminent danger of death or serious bodily injury—

- (i) the defendant is responsible only for actual awareness or actual belief possessed; and
- (ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

- (C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

- (D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.
- (E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

- (F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- (6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

- (1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

- (A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

- (i) during any period of federally assumed enforcement, or

- (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

- (B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

- (C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of

this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

- (1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.
- (2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,⁽³⁾ or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

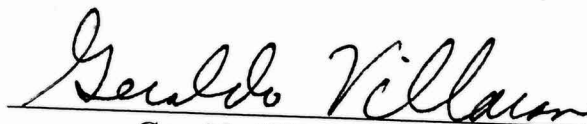
For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **January 21, 2015**, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7005-3110-0000-5947-3290** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Kathleen Schibanoff, CEO
Olivet Management LLC
73 Wheeler Road
Wingdale, New York 12594**


Geraldo Villaran

